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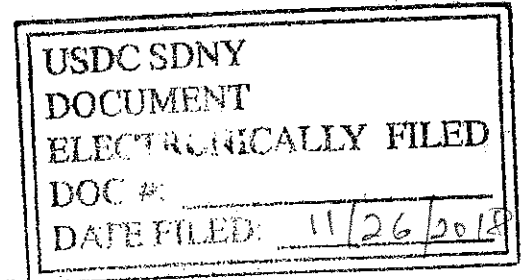
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MEMO ENDORSE

November 26, 2018

Via ECF



The Honorable Denise L. Cote
United States District Judge
United States District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007-1312

Re: *In re Subpoena and Deposition Notice to George Howard III*, No. 1:18-mc-538

Dear Judge Cote:

We are counsel for Respondent Dr. Richard H. Tholen in connection with George Howard's motion to quash. Dr. Tholen moves for a one-week extension of the deadline for Dr. Tholen's opposition brief, and to postpone oral argument accordingly. Dr. Tholen's current deadline to file his opposition is Tuesday November 27, and the Court recently set oral argument for Friday November 30. Thus, Dr. Tholen requests the Court reset the deadline for his opposition for December 4, and oral argument for December 7 (or at the Court's convenience any day after December 4).

Good cause exists for this one-week extension because the motion was filed the Tuesday before the Thanksgiving holiday. As a professional courtesy, we accepted service of that motion by email and received a copy in the evening on November 20. His memorandum of law for this discovery dispute spans 15 pages and cites 27 cases. We request a reasonable extension to review and respond to this brief and authority. Because of earlier commitments based on the Thanksgiving holiday, we have not had a fair and meaningful opportunity to do so under the current deadline for Dr. Tholen's opposition.

We have conferred with counsel for Mr. Howard about this request, and he opposes the request. The morning after Mr. Howard filed his motion, we observed that the Court set a hearing on this matter—although counsel for Mr. Howard never served notice of it as directed by the Court¹—and requested a one-week extension. Ex. 1. Mr. Howard initially consented, and even asked for a longer

¹ "IT IS FURTHER ORDERED that the movant shall forthwith serve a copy of this Order upon counsel for the respondent." Dkt No. 6.

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extension so he could file a reply. *Id.* But then after the close of business, he withdrew his consent based on a filing earlier that morning in the District of Minnesota – where this underlying case is venued. *Id.* That filing is attached as Exhibit 2. We asked counsel to reconsider his position, but received no response.

Part of Dr. Tholen's opposition to Mr. Howard's motion is that the District of Minnesota has already addressed the same issues here – an objection to Mr. Howard's deposition, and a motion to quash the same subpoena in front of this Court. Only after Assist America and Mr. Howard did not like the outcome of that earlier motion did Mr. Howard pursue any relief in this Court. Indeed, back on October 30, Magistrate Judge Rau explained "First of all, the deposition is going to take place." He then ordered an additional meet-and-confer about the scope of the document requests. Magistrate Judge Rau later directed Mr. Howard to provide a response on November 20. But Mr. Howard chose not to do so. We therefore alerted Magistrate Judge Rau to that fact, and asked for the opportunity to be heard since this discovery dispute has been ongoing since August and Mr. Howard's current motion increases the burden and expense on Dr. Tholen. Even then, nothing in that letter changes the fact that we would like a short extension here to address Mr. Howard's motion.

There have been no other previous requests for adjournment or extensions of time from this Court in this matter.

Respectfully submitted,

s/ Alexander D. Newman
Alexander D. Newman

s/ Patrick M. Arenz
Patrick M. Arenz
(*pro hac vice* application to be submitted)

cc: All counsel of record (via ECF)

Filed.
Patrick M. Arenz
11/26/18